UNITED
NATIONS

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Security Council

Distr.
GENERAL

S/1999/1117
2 November 1999

ORIGINAL: ENGLISH

LETTER DATED 2 NOVEMBER 1999 FROM THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991 ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

As you are aware, my term of office as President of the International Tribunal will come to an end on 16 November 1999. I would, therefore, like to draw your attention to several outstanding matters of State non-compliance with article 29 of the International Tribunal's statute. During the past four years, my predecessor, Judge Antonio Cassese, and I have reported, on numerous occasions, State non-compliance and many of these matters remain unresolved. In fact, notwithstanding action by the Security Council, including resolutions 1019 (1995) and 1207 (1998) and several presidential statements, the States concerned have continued to flaunt the will of the international community, refusing to cooperate with the Tribunal and failing to carry out their legal obligations. This is simply unacceptable, and I respectfully request that the Security Council take steps to address this troubling situation.

These reports may be categorized as follows: (1) failure to arrest and transfer individuals indicted by the Tribunal; (2) failure to recognize the Tribunal's jurisdiction over certain operations; and (3) failure to permit investigators of the Tribunal access to sites in Kosovo where criminal activity allegedly occurred. Attached hereto is a list setting forth previous reports of non-compliance. With the recent events, and the Prosecutor herself in Kosovo, this latter category has largely been resolved. The first two categories, however, remain unresolved and constitute continuing acts of non-compliance by the States and entity involved.

Permit me to reiterate these unresolved reports and to stress, once again, why it is important that States comply with the orders and requests for assistance from the Tribunal. We have made a number of requests for the arrest and transfer of eight individuals. The most frequently requested failure to arrest and transfer indicted individuals concerns what have become known as the "Vukovar three". These individuals, Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin, were indicated for the murder of 260 civilians and other unarmed men, following the fall of Vukovar in November 1991. On 3 April 1996, Trial Chamber I of the Tribunal certified that "the failure to effect service of the indictment was due to the refusal of the Federal Republic of Yugoslavia". Consequently, this failure to comply was reported to the Security Council on no

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less than four occasions, yet those individuals remain at large. Other reports citing the failure to arrest and transfer indicted individuals have been addressed to the Bosnian Serb entity (concerning Dragan Nikolić), the Federal Republic of Yugoslavia (concerning Radovan Karadžić and Ratko Mladić), the Republic of Croatia (concerning Ivica Rajić and Mladen Naletilić) and Bosnia and Herzegovina (concerning Ivica Rajić).

With respect to the failure to recognize the Tribunal's jurisdiction over certain operations, on 25 August 1999, I reported non-compliance of the Republic of Croatia concerning that State's failure to recognize the Tribunal's jurisdiction over events relating to "Operation Storm" and "Operation Flash". The Security Council has not responded to this report, which was made pursuant to rule 7 bis of the Tribunal's Rules of Procedure and Evidence. Moreover, I reported the failure of the Federal Republic of Yugoslavia to recognize the Tribunal's jurisdiction over alleged offences committed in Kosovo.

As I have stressed repeatedly in reporting such non-compliance to the Security Council, the Tribunal is at the mercy of the international community for enforcement of its orders. The Tribunal lacks coercive mechanisms and must rely on the international community to give effect to its arrest warrants and other orders. All too often, this assistance is lacking. To make matters worse, the Tribunal is often at odds with the authorities of certain States of the former Yugoslavia which have attempted to systematically undermine the work of the Tribunal. When faced with what has amounted to blatant obstructionism, the Tribunal's only recourse is to the body that created it - the Security Council.

In this, my final report to the Security Council as President of the Tribunal, I implore you to take the effective measures necessary to bring these recalcitrant States and entity back into the fold of the community of law-abiding nations. No State has the right to disregard its clear obligations under international law. The Tribunal is a creation of the Security Council, acting pursuant to Chapter VII of the Charter of the United Nations. Consequently, and in accordance with article 29 of the Tribunal's statute, States are obligated to comply with the orders and requests for assistance of the Tribunal.

On the verge of the twenty-first century, it is simply unacceptable that territories have become safe-havens for individuals indicted for the most serious offences against humanity. It must be made absolutely clear to such States that this behaviour is legally - as well as morally - wrong. The Security Council has the authority and wherewithal to rectify this situation. For the benefit of all the peoples of the former Yugoslavia, I urge you to act.

In the event the Security Council would like additional information regarding any of these specific instances of non-compliance, I will be in New York from 4 to 8 November, and at United Nations Headquarters on 8 November 1999, when I will present the Tribunal's sixth annual report to the General Assembly.

(Signed) Gabrielle KIRK McDONALD
President

Annex

Reports of the President of the International Tribunal to the President of the Security Council

Date	State(s) reported	Reason for report	Disposition
31 October 1995	Bosnian-Serb administration in Pale	Failure to arrest Dragan Nikolić	Security Council in resolution 1019 (1995) took note of the letter and demanded compliance with "requests for assistance or orders issued by a Trial Chamber under article 29 of the statute"
24 April 1996	Federal Republic of Yugoslavia	Failure to arrest "Vukovar three"	Presidential statement dated 8 May 1996
11 July 1996	Federal Republic of Yugoslavia	Failure to arrest Karadžić and Mladić	Presidential statement dated 8 August 1996
16 September 1996	Croatia; Bosnia and Herzegovina	Failure to arrest Ivica Rajić	Presidential statement dated 20 September 1996
8 September 1998	Federal Republic of Yugoslavia	Failure to arrest "Vukovar three"	Considered in Security Council resolution 1207 (1998)
2 October 1998*	Federal Republic of Yugoslavia	Failure to arrest "Vukovar three"	Considered in resolution 1207 (1998)
23 October 1998	Federal Republic of Yugoslavia	Failure of the Federal Republic of Yugoslavia to recognize the jurisdiction of the Tribunal with respect to events in Kosovo; failure to arrest "Vukovar three"	Considered in resolution 1207 (1998)
6 November 1998	Federal Republic of Yugoslavia	Failure to issue visas to investigators of the Office of the Prosecutor to enter Kosovo	Considered in resolution 1207 (1998)

* Oral address to the Security Council.

Date	State(s) reported	Reason for report	Disposition
8 December 1998[a]	Federal Republic of Yugoslavia	Failure to comply with resolution 1207 (1998) (relating to failure to issue visas to investigators of the Office of the Prosecutor to enter Kosovo)/ failure to arrest "Vukovar three"	None
16 March 1999[b]	Federal Republic of Yugoslavia	Failure to comply with resolutions 1160 (1998) and 1207 (1998) (relating to failure to issue visas to investigators of the Office of the Prosecutor to enter Kosovo)	None
25 August 1999[c]	Croatia	Failure to recognize the Tribunal's jurisdiction over "Operation Storm" and "Operation Flash"/failure to arrest and transfer Tuta (Mladen Naletilić)	None

Note: Reports made in 1995 and 1996 were by then-President Antonio Cassese.

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[b] Pursuant to rule 7 bis (B) request of Prosecutor dated 2 February 1999.

[c] Pursuant to rule 7 bis (B) request of Prosecutor dated 28 July 1999.